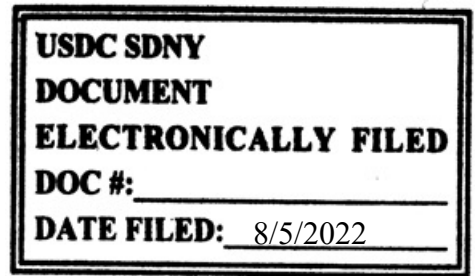


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Case No. 19-CV-00502 (RWL)

ESTEBAN FLORES BARRETO PELON, ENRIQUE J. BALDERAS, FRANCISCO FLORES BARRETO, EDGAR EDUARDO MONTERROSO LOPEZ, DAGOBERTO FLORES BARRETO, HECTOR PLIEGO MASTACHE, HILARIO BARRETO GARCIA (A.K.A. WILLY), JOSE MANUEL BARRETO CORTEZ, JUAN ZEFERINO, JOSE VICTOR GARCIA CASTELAN (A/K/A VICTOR GARCIA), SERGIO GARCIA CASTELAN, BALTAZAR DE LOS SANTOS HERNANDEZ, EDUARDO DE JESUS NORIEGA, FABIAN DE JESUS GREGORIO, HONORIO CANDIA LIBRADO, JUAN CARLOS CARDENAS, MARCELINO CRUZ, MELVIN RAMIREZ, MILAN FLORES HELADIO, RAUL VILLEGAS PERALTA, ANTONIO LOPEZ, JUAN PABLO BARRETO ANZURES, OCTAVIO PERALTA MARCELO, WILMER BATEN, SIXTO VICENTE, ELICIAS LORENZO MEJIA SAPON, JILMAR RAMIREZ (A/K/A JOSE PEREZ), RAFAEL VALENCIA ORTEGA, and JUAN JOSE CRUZ GARCIA, *on behalf of others similarly situated*,

Plaintiffs,

v.

GABI OPERATING CORP. (D/B/A MARINARA PIZZA (F/D/B/A SABA'S PIZZA)), BRITTGAB CORP. (D/B/A SABA'S PIZZA), PIZZA 84 LLC (D/B/A MARINARA PIZZA), PIZZA 54 INC. (D/B/A MARINARA PIZZA), MOSHGAB CORP. (D/B/A SABA'S PIZZA), PIZZA 26 LLC (D/B/A MARINARA PIZZA), PIZZA 10 LLC (D/B/A MARINARA PIZZA), GABRIEL WEISER and JONATHAN BANAYAN,

Defendants.

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, AND APPROVAL OF THE PROPOSED NOTICES OF SETTLEMENT.

The above-entitled matter came before the Court on the parties' joint Motion for Preliminary Approval of Class Settlement, Conditional Certification of the Settlement Class,

Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of the Proposed Notices of Settlement ("Motion for Preliminary Approval").

1. Based upon the Court's review of the Memorandum of Law in Support of the Joint Motion for Preliminary Approval dated July 18, 2022, the Declaration of William K. Oates, Esq. dated July 18, 2022 ("Oates Decl."), and all other papers submitted in connection with the Motion for Preliminary Approval, the Court grants preliminary approval of the class settlement memorialized in the Settlement Agreement and Release ("Settlement Agreement") between the Named Plaintiffs, on behalf of themselves and all others similarly situated, and Defendants, attached to the Oates Decl. as Exhibit 1, and "So Orders" the terms therein..

2. The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval such that notice to the Class is appropriate.

3. The Court finds that the Settlement Agreement is the result of extensive arms-length negotiations by counsel well-versed in wage and hour actions.

4. For settlement purposes only, the Court certifies the following collective action class under 29 U.S.C. § 216(b) (the "FLSA Collective"): Persons who worked as a non-exempt food service worker for Defendants between January 17, 2016 and the date the Court issues a preliminary approval order.

5. For settlement purposes only, the Court certifies the following class under Fed. R. Civ. P. 23(e) (the "Class"): Persons who worked as a non-exempt food service worker for Defendants between January 17, 2013 and the date the Court issues a preliminary approval order.

6. For settlement purposes only, all members of the FLSA Collective and the Rule 23 Class, as defined in paragraphs 4 and 5, are considered to be Class Members and will be notified of the Settlement Agreement.

7. For settlement purposes only, Plaintiffs meet all of the requirements for class certification under Federal Rules of Civil Procedure 23(a) and (b)(3).

8. For settlement purposes only, the Court appoints C.S.M. Legal, P.C. as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).

9. For settlement purposes only, the Court appoints Rust Consulting as the Settlement Claims Administrator.

10. The Court approves the Proposed Notice of Proposed Class Action Settlement and Fairness Hearing (“Notice”), which is attached as Exhibit A to the Settlement Agreement, which is attached as Exhibit 1 to the Oates Decl., and directs distribution of the Notice.

11. The Court approves the Proposed Letter and Claim Form, which are attached as Exhibits A, B, and C to the Settlement Agreement, which is attached as Exhibit 1 to the Oates Decl., and directs distribution of the Letter and Claim Form.

12. Within thirty (30) calendar days of the date that the Court issues a preliminary approval order, Defendants’ Counsel will provide the Claims Administrator and Class Counsel with a list, in Microsoft Excel format, of each Class Member’s (1) name, (2) last-known address, and (3) hours worked by each Class Member between January 17, 2013 and the date the Court issues a preliminary approval order.

13. Each Claimant will receive a proportionate Individual Settlement Amount of the Net Settlement Fund based on the total number of hours worked for Defendants from January 17, 2013 to the date the Motion for Preliminary Approval is submitted to the Court.

14. The Net Settlement Fund shall be distributed to Claimants, which includes the Named Plaintiffs who have signed this Agreement. These Claimants’ pro rata share shall be allocated according to the following formula: (1) calculate the total number of hours each Claimant

worked from January 17, 2013 to the date the Motion for Preliminary Approval is submitted to the Court; (2) divide each Claimant's total hours worked in that same time period by the total number of hours worked by all of such Claimants from January 17, 2013 to the date the Motion for Preliminary Approval is submitted to the Court to derive a percentage; and (3) each of such Claimant's Individual Settlement Amount will equal their respective percentage of the Net Settlement Fund.

15. Within fourteen (14) days of receiving the information described in Paragraph 12 of this Order, the Claims Administrator shall distribute a Letter, Notice, IRS W-9 Form ("IRS Form"), and Claim Form via First-Class United States mail, postage prepaid, to each Class Member.

16. Class Members will have sixty (60) days from the date the Letter, Notice, Claim Form, and IRS Form is mailed out to either sign and return a completed Claim Form or mail a letter to the Settlement Claims Administrator stating that he/she is electing to opt out of the settlement ("Claim Form Deadline").

17. Class Members will have sixty (60) days from the date the Letter, Notice, Claim Form, and IRS Form is mailed out to submit objections to the settlement.

18. Class Members will have three hundred (300) days from the Claim Form Deadline to sign and return a completed IRS Form.

19. Plaintiffs will file a Motion for Final Approval of Settlement no less than seven (7) days prior to the fairness hearing.

20. The Court will hold a final fairness hearing on 2/7/2023 at 9:30 a.m. a.m./p.m. at the United States District Court, Southern District of New York, 500 Pearl Street, Courtroom 18D, New York, New York 10007.

SO ORDERED this 5th day of August, 2022.



Hon. Robert W. Lehrburger, U.S.M.J.